

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

AKORN HOLDING COMPANY LLC,
*et al*¹

Debtors.

Chapter 7

Case No. 23-10253 (KBO)

(Jointly Administered)

Hearing Date: April 27, 2023 (Requested)

Objection Date: At the Hearing

**TRUSTEE’S MOTION TO SHORTEN NOTICE PERIOD
AND SCHEDULE EXPEDITED HEARING REGARDING TRUSTEE’S MOTION FOR
ENTRY OF (I) AN ORDER (A) APPROVING BIDDING PROCEDURES IN
CONNECTION WITH SALE OF SUBSTANTIALLY ALL OF THE ESTATES’ ASSETS,
(B) SCHEDULING AN AUCTION AND HEARING TO CONSIDER THE PROPOSED
SALE, AND (C) APPROVING THE FORM AND MANNER OF NOTICE THEREOF**

George L. Miller, in his capacity as the chapter 7 trustee (the “Trustee”) for the estates (the “Estates”) of the above-captioned debtors (the “Debtors”), respectfully files this Motion for entry of an order shortening the notice period and scheduling an expedited hearing (the “Motion to Shorten”) with respect to the proposed relief set out in the form of Bidding Procedures Order accompanying the *Trustee’s Motion for Entry of (I) an Order (A) Approving Bidding Procedures in Connection With Sale of Substantially All of the Estates’ Assets, (B) Scheduling an Auction and Hearing to Consider the Proposed Sale, and (C) Approving the Form and Manner of Notice Thereof; and (II) an Order (A) Approving the Sale, (B) Authorizing the Assumption and Assignment of Executory Contracts and Unexpired Leases, and (C) Granting Certain Related Relief* (the “Motion”),² pursuant to Rule 9006(c)(1) of the Federal Rules of Bankruptcy Procedure

¹ The Debtors in these chapter 7 cases, along with the last four digits of their federal tax identification numbers, and cases numbers are Akorn Holding Company LLC (9190), Case No. 23-10253 (KBO); Akorn Intermediate Company LLC (6123), Case No. 23-10254 (KBO); and Akorn Operating Company LLC (6184), Case No. 23-10255. The Debtors’ headquarters is located at 5605 CenterPoint Court, Gurnee, IL 60031.

² Capitalized terms not defined in this Motion to Shorten shall have the meanings provided in the Motion.

(the “Bankruptcy Rules”), and Rules 9006-1(c)(i), 9006-1(e), and 6004-1(c) of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the “Local Rules”). In support of this Motion to Shorten, the Trustee respectfully states:

Background

1. Simultaneously with this Motion to Shorten, the Trustee is filing the Motion. For the reasons described in the Motion, the Trustee is facing exigent circumstances in these cases, and is in urgent need of the relief set out in the Bidding Procedures Order on an expedited basis.

2. As described in the Motion, some of the Abbreviated New Drug Applications (“ANDAs”) owned by the Debtors and proposed to be sold relate to drugs presently in short supply in the marketplace in the United States, and which were manufactured in the Debtors’ U.S. facilities. Because those facilities are shuttered, these drugs are not being manufactured, which has obviously exacerbated the shortages. The sooner the Trustee can transfer the Debtors’ ANDAs to an operating purchaser (or purchasers), the sooner production of these drugs can resume and supply chain disruptions in the delivery of these needed drugs to the public can be minimized.

3. In addition, as also described in the Motion, much of the value of non-debtor Akorn AG – and, consequently, the value of the Estates’ stock in Akorn International S.á.r.l – lies in the fact that Akorn AG is still operating. If Akorn AG were to shut down, it would likely incur significant costs associated with the shut-down, including significant liability under Swiss labor law, which would sap much of its value. Furthermore, if its operations were to cease, it’s facility would become “non-sterile,” resulting in a further significant loss of value. Akorn AG only has enough working capital and funding in place to maintain its operations for a short time.

4. Finally, as also described in the Motion, the Debtors’ U.S. operations have entirely shut down. The rate of depreciation for static and idle assets in the pharmaceutical industry is

steep, and the Debtors' ongoing storage costs are high. For all of these reasons, as well as the reasons described in the Motion, the Trustee submits that expedited consideration of the Motion is justified.

5. Local Rule 9006-1(c) provides, "Unless the Fed. R. Bankr. P. or these Local Rules state otherwise, all motion papers shall be filed and served in accordance with Local Rule 2002-1(b) at least fourteen (14) days prior to the hearing date." Del. Bankr. L.R. 9006-1(c)(i). Pursuant to Bankruptcy Rule 9006(c)(1), the Court may, for cause shown, shorten the otherwise applicable notice period ("when an act is required or allowed to be done at or within a specified time by these rules or by a notice given thereunder or by order of court, the court for cause shown may in its discretion with or without motion or notice order the period reduced"). This authorization is also expressed in Local Rule 9006-1(e), which provides that the Court may shorten the notice period "on written motion (served on all interested parties) specifying the exigencies justifying shortened notice." Local Rule 9006-1(e). In addition, Local Rule 6004-1(c) provides that a motion seeking approval of a sale procedures order may be held on shortened notice under compelling circumstances.

6. The Trustee respectfully requests that the Court enter an order shortening the notice period and scheduling an expedited hearing to consider the Trustee's request for entry of the Bidding Procedures Order on April 27, 2023 or at the Court's earliest possible convenience, and allowing responses to the Trustee's request for entry of the Bidding Procedures Order to be made at the hearing.

7. The Trustee proposes to serve a copy of the Motion, together with any Order approving this Motion to Shorten, on the Notice Parties (as defined below). In light of the nature of the relief requested, the Trustee submits that no further notice need be given. The Trustee

submits that such service is adequate and sufficient for purposes of the relief requested in the Bidding Procedures Order, and would afford interested parties sufficient notice and opportunity to be heard.

Statement of Compliance with Local Rule 9006-1(e)

8. Delaware counsel for the Trustee has made a reasonable effort to notify counsel for the Office of the United States Trustee regarding this Motion to Shorten and determine whether they objected to the relief sought.

Notice

9. This Motion to Shorten and the Motion are being served on the following parties (the “Notice Parties”): (i) the Office of the United States Trustee; (ii) the Debtors’ counsel; (iii) counsel for the ABL Agent, (iv) counsel for the TL Administrative Agent, (v) known counsel to the ABL Lenders; (vi) known counsel for TL Lenders; (vii) largest thirty (30) unsecured creditors with names and addresses appearing in Schedule F of the Schedules of Assets and Liabilities prepared by the Debtors; and (viii) all parties who have requested notice pursuant to Federal Rule of Bankruptcy Procedure 2002. In light of the nature of the relief requested, the Trustee submits that no further notice need be given.

WHEREFORE, the Trustee respectfully requests that the Court enter an order, substantially in the form attached, (I) scheduling an expedited hearing to consider his request for entry of the Bidding Procedures Order; and (II) granting any further relief that may be appropriate.

Dated: April 20, 2023

COZEN O'CONNOR

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